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CONSUMER RIGHTS AND CHARITABLE SOLICITATIONS

§ 25. 1. Introduction

This consumer rights chapter describes the protections provided Maine consumers when being solicited for charitable contributions. It contains the following sections:

§ 25. 2. The Maine Charitable Solicitations Act

§ 25. 3. Disclosures To Consumers When Soliciting Charitable Contributions

§ 25. 4. Considerations When Contributing to a Charity

§ 25. 5. Misuse of Charitable Donations

§ 25. 6. Police Solicitations

§ 25. 7. Consumer Remedies and Maine Laws

§ 25. 2. The Maine Charitable Solicitations Act

The Maine Charitable Solicitations Act¹ requires the registration and financial reporting of charitable organizations and the registration and bonding of professional fund-raisers. *Religious organizations are exempted from this Act.* This Act's registration requirements are as follows:

A. Charitable Organizations

If a charitable organization intends to conduct charitable fundraising in Maine it must register with the Department of Professional and Financial Regulation, State Office Annex, Northern Avenue, Gardiner, Maine 04345 (207-624-8603).

A charitable organization does not have to file any registration statement with the Department of the Attorney General, except that all charitable foundations are required by the IRS to file a copy of their Return of Private Foundation (form 99D-PF) with the Department of the Attorney General.

B. Raising Funds For A Specific Charitable Cause

If a party is not a charitable organization and is not working for a charitable organization but still wishes to raise money for a specific charitable cause, it must still be registered under the Charitable Solicitations Act. This Act defines a charity as “any person which is or *holds itself out to be* organized or operated for any charitable purpose which solicits, accepts or obtains contributions from the public for any charitable purpose.”² A charitable purpose is broadly defined, including “any charitable,

¹ 9 M.R.S.A. §§ 5001-5016.

² 9 M.R.S.A. § 5003(1).

benevolent, educational, philanthropic, humane, patriotic, or eleemosynary purpose.”³

Thus, if the solicitation would reasonably lead prospective donors to believe that the cause is charitable, the party would need to register as a charitable organization. In addition, if the party is earning a fee from the fundraising, it must register as a professional fundraiser.

C. Commerical Co-Venturer

If an organization sponsors special events to raise money for charitable organizations and receives a fee for its services then the Charitable Solicitations Act requires it to register as a “Commercial Co-Venturer.” In order to register, it will have to pay a \$100 filing fee and post a \$10,000 bond. The Department of Professional and Financial Regulations will provide a packet which includes the statute, regulations and filing forms.

D. Professional Fundraiser

An organization that performs fundraising services for a fee on behalf of a charitable organization must register as either a “professional fundraising” council or a “professional solicitor.” It must register with the Department of Professional and Financial Regulation and post bond.

E. Employees Of Charitable Organizations

If a person is employed by a charitable organization and conducts fundraising then that person is generally not deemed to be a professional solicitor or professional fundraising council. However, if this person’s salary or compensation is computed on the basis of funds to be raised or actually raised then that person is indeed acting as a professional solicitor or professional fundraising council and must register with the State and post bond.

§ 25. 3. Disclosures To Consumers When Soliciting Charitable Contributions

Under the Maine Charitable Solicitations Act both charitable organizations and professional fundraisers must make specific disclosures to consumers when they solicit funds. Failure to make such disclosures is a *per se* violation of the Maine Unfair Trade Practices Act⁴ and injured consumers can demand their money back (restitution). See § 25.7, Consumer Remedies And Maine Law.

A. Mandatory Disclosures For Charitable Organizations

The Maine Charitable Solicitations Act requires charitable organizations which are soliciting on their own to disclose to potential contributors at the time of the solicitation, *but prior to the request for contributions*, the name and address of the charitable organization.⁵

B. Solicitation By A Professional Charitable Fundraiser

Professional fundraisers, in addition to providing the name and address of the charitable organization, must also provide the following two pieces of information:

- (1) The name and address of the professional fundraising council, professional solicitor or commerical co-venturer; and
- (2) The following statement: “(insert name) is a professional charitable fundraiser.”⁶

³ 9 M.R.S.A. § 5003(2).

⁴ 5 M.R.S.A. §§ 205-A - 214.

⁵ 9 M.R.S.A. § 5012(1).

⁶ 9 M.R.S.A. § 5012(2).

§ 25. 4. Considerations When Contributing To A Charity

Charitable solicitations are becoming evermore prevalent. Unfortunately, some solicitations are deceptive and bogus. Consumers should consider the following practical advice before donating to a charity:

- (1) Do not give cash. Always make contributions by check and make the check out to the charity, not to the individual collecting the donation. Never give out a credit card number over the phone.
- (2) Keep records of all your donations (receipts, canceled checks, and bank statements) so you can document your charitable giving at tax time.
- (3) Before making a donation, check out the charitable organization with the Department of Professional and Financial Regulation (207-624-8603), the Attorney General's Public Protection Unit (207-626-8849 between 9-12 noon) or the Better Business Bureau (207-878-2715). Of particular help is the Council of Better Business Bureaus' Philanthropic Advisory Service, 4200 Wilson Blvd., Arlington, Virginia 22203 (703-276-0100). This organization monitors and reports on national and international soliciting organizations. At no cost, consumers can receive a single report on an individual charitable organization. You can also contact National Charities Information Bureau in New York City (212-929-6300) or the American Institute of Philanthropy (314-454-3040). You should also ask for a copy of the charity's latest annual report.
- (4) Note carefully whether the solicitor makes the disclosures required by the Maine Charitable Solicitations Act (*See* § 25.3).
- (5) Do not give in to pressure to give money on the spot or allow a "runner" to pick up a contribution. The charity that needs your money today will welcome it just as much tomorrow.
- (6) When you are asked to buy candy, magazines, cards or tickets to a dinner or show to benefit a charity, be sure to ask what the charity's share will be. You cannot deduct the full amount paid for any such item, as the IRS considers only the part above the value of the item to be a charitable contribution. For example, if you paid \$10 for a box of candy that normally sells for \$8, only \$2 can be claimed as a charitable donation.
- (7) Simply because a charitable organization is "tax exempt" does not mean that your contributions to it are tax *deductible*. The Internal Revenue defines more than 20 different categories of tax exempt organizations, but contributions to only a few of these categories are tax deductible. Principle among the "tax deductible" group is the 501(c)(3) category, broadly termed "charitable" organizations.
- (8) Always request literature from phone solicitors. If they want your pledge first, hang up or ask for a number so you can call them back.

§ 25. 5. Misuse Of Charitable Donations

Charities are prohibited from soliciting charitable donations and then using the money for purposes other than what was promised would be done. Maine Law, at 5 M.R.S.A. § 194, orders the Attorney General to make certain that charities do not misuse these funds.⁷ This law states in its entirety:

The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration thereof.

This law applies to all charities, including religious organizations.

§ 25. 6. Police Solicitations

In recent years the Maine Legislature has repeatedly attempted to limit the ability of police organizations to solicit funds from the public. As the Legislature stated recently, police solicitations can be “inherently coercive” and can result in undermining the integrity of law enforcement. The current law in this area is that Maine police can solicit charitable contributions *only if* the money will *not* “tangibly benefit” law enforcement efforts.⁸ Thus, most police solicitations are now prohibited. Any money raised by police must be for a charity that is unrelated to law enforcement.⁹ Of course, any allowable police solicitations must also meet the requirements of the Maine Charitable Solicitations Act.¹⁰

§ 25. 7. Consumer Remedies And Maine Laws

If a charitable organization or its professional fundraiser fails to adhere to the requirements of the Maine Charitable Solicitations Act, including registration, bonding, and disclosures to potential contributors, it has violated the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 205-A-214). Pursuant to 5 M.R.S.A. § 213, consumers can bring a private court suit to recover lost monies for such a violation. If they are successful they will also be awarded their attorneys’ fees. *See* Chapter 3 of this Guide, Unfair Trade Practices.

Additionally, a charitable organization can violate the Unfair Trade Practices Act if it uses deceptive solicitation tactics (e.g., misrepresenting the reason for the fundraising or the use the donations will be put to.) Remember: Religious organizations are exempt from the requirements of the

⁷ On October 9, 1991, the Maine Superior Court approved a Consent Decree in the matter of *State of Maine v. International Union of Gospel Missions, Inc.* Pursuant to this Consent Decree, IUGM was prohibited from misrepresenting that a particular donation will provide for a definite amount of services (e.g., a donation of \$13.90 will feed ten hungry people). IUGM also agreed to pay to a Lewiston homeless shelter \$7,587 in furtherance of holiday solicitations in 1989-90. IUGM did not admit to any wrongdoing in entering into this Consent Decree.

⁸ 25 M.R.S.A. § 3702-A. *See Auburn Police Union, et al. v. Michael Carpenter, as Attorney General of the State of Maine*, F.2d (1st Cir. 1993).

⁹ The Department of the Attorney General’s regulations describe the class of permissible solicitations as follows:
A solicitation of money for purposes completely unrelated to law enforcement, such as for a charity unrelated to law enforcement, does not confer a tangible benefit on law enforcement even if the solicitation effort increases good will toward law enforcement. For example, if police officers engage in solicitations of money for earthquake victims in South America, and if no law enforcement agency, officer, or association receives, is intended to receive, or is represented to receive any of the process of the solicitation, then that solicitation program will *not* tangibly benefit law enforcement.

Me. Dept of Att’y Gen. ch. 109.2: Rules Concerning Unfair Trade Practices and Charitable Solicitations by Law Enforcement Officers.

¹⁰ 9 M.R.S.A. §§ 5001-5016. *See above* §§ 25.2 - 25.3.

Maine Charitable Solicitations Act. Further, a religious organization's fundraising efforts would probably not qualify as a "trade or commerce" and therefore would not fall under the requirements of the Maine Unfair Trade Practices Act.

Finally, the Attorney General has the authority to make certain that all charities, including religious organizations, properly use charitable donations and not divert them to their own use or to uses different than those promised when soliciting the donations. *See* 5 M.R.S.A. § 194.